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B&G FOODS NORTH AMERICA, INC.
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

16 B&G FOODS NORTH AMERICA, INC.,

17 Plaintiff,

18 v.

19 KIM EMBRY and ENVIRONMENTAL
20 HEALTH ADVOCATES, INC., acting as
enforcement representatives under California
Proposition 65 on behalf of the State of
21 California,

22 Defendants.

Case No. 2:20-cv-00526-KJM-DB

**B&G FOODS NORTH AMERICA,
INC.'S NOTICE OF HEARING RE
DEFENDANTS' ORCHESTRATED
SHAM LITIGATION (REQUESTS FOR
PRODUCTION NOS. 17-23, 25) AND
PUBLIC INTEREST ALLEGATIONS
(REQUEST FOR PRODUCTION NO. 16,
30(B)(6) DEPOSITION TOPIC NOS. 11-
15, 17, 21-22, 24) AND MOTION TO
COMPEL**

Date: January 26, 2024
Time: 10:00 AM

Magistrate Judge: Hon. Deborah Barnes
Courtroom: 27

SAC Filed: November 23, 2022
Trial Date: None Set

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 **PLEASE TAKE NOTICE** that on January 26, 2024 at 10:00 a.m. in Courtroom 27 of the
4 United States District Court, Eastern District of California, located at 501 I Street, Sacramento, CA
5 95814, a hearing will be held on the discovery disagreement between Plaintiff B&G Foods North
6 America, Inc. (“B&G Foods”) and Defendants Environmental Health Advocates, Inc. (“EHA”) and
7 Kim Embry (collectively, “Defendants”). The matters for the hearing include: (1) whether
8 Defendants should be compelled to provide full and complete responses to B&G Foods’s Requests
9 for Production Nos. 17–23 and 25, including documents relating to their orchestration of sham
10 Proposition 65 litigation; (2) whether Defendants should be compelled to provide a full and
11 complete response to B&G Foods’s Requests for Production No. 16, including documents relating
12 to their representation that their state court actions against B&G Foods were brought in the public
13 interest; and (3) whether Defendants should be compelled to designate a corporate deponent for
14 Topic Nos. 11–15, 17, 21–22, 24, relating to B&G Foods’s allegation that Defendants did not file
15 suit in the public interest but rather to pocket the 25% penalty under Proposition 65.

16 The specifics of the parties' dispute and the parties' respective contentions are detailed in
17 the forthcoming Joint Statement.

19 || Dated: January 5, 2024

Respectfully submitted,

BRAUNHAGEY & BORDEN LLP

By:  Matthew Borden

*Attorneys for Defendant
B&G Foods North America, Inc.*

MOTION TO COMPEL

Plaintiff B&G Foods North America, Inc. (“B&G Foods”) hereby moves the Court for an order (1) compelling Defendants Environmental Health Advocates, Inc. (“EHA”) and Kim Embry (collectively, “Defendants”) to provide full and complete responses to B&G Foods’s Requests for Production Nos. 17–23 and 25, including documents relating to their orchestration of sham Proposition 65 litigation; (2) compelling Defendants to provide a full and complete response to B&G Foods’s Requests for Production No. 16, including documents relating to their representation that their state court actions against B&G Foods were brought in the public interest; and (3) compelling Defendants to designate a corporate deponent for Topic Nos. 11–15, 17, 21–22, 24, relating to B&G Foods’s allegation that Defendants did not file suit in the public interest but rather to pocket the 25% penalty under Proposition 65.

12 The Motion is based on the forthcoming Joint Statement regarding Discovery
13 Disagreement and supporting papers and the entire record herein.

15 || Dated: January 5, 2024

Respectfully Submitted,

BRAUNHAGEY & BORDEN LLP

By:  Matthew Borden

*Attorneys for Plaintiff
B&G Foods North America, Inc.*